

BEFORE THE FEDERAL ELECTION COMMISSION 2014 OCT -9 AM 11:40

In the Matter of)
MUR 6665)
Alex Pires for U.S. Senate)
and Stephen W. Spence as treasurer)
Alexander J. Pires, Jr.)
Bottle & Cork)
Jimmy's Grille & Catering, LLC)
Woodward Outdoor Equipment)

CELA
DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"),¹ and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 6665 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.²

¹ On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

² The EPS rating information is as follows: Complaint Filed: October 12, 2012. Response from Woodward Outdoor Equipment Filed: November 5, 2012. Responses from the Committee, Pires, Bottle & Cork, and Jimmy's Grille Filed: November 6, 2012.

For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss the allegations that Respondents Alexander J. Pires, Jr. ("Pires"), Alex Pires for U.S. Senate and Stephen W. Spence in his official capacity as treasurer (collectively the "Committee"), Bottle & Cork, Jimmy's Grille & Catering, LLC ("Jimmy's Grille"), and Woodward Outdoor Equipment violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2. The Office of General Counsel also recommends that the Commission exercise its prosecutorial discretion and dismiss the allegations that Pires and the Committee violated 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)) and 11 C.F.R. § 110.11(a)(1) and (b)(1).

I. FACTS

John D. Daniello, Chairman of the Delaware Democratic Party (collectively "Complainants"), filed a Complaint asserting that Pires, an independent candidate for U.S. Senator from Delaware in 2012 and his Committee violated the Act and Commission regulations by accepting prohibited in-kind corporate contributions in connection with two campaign events and by failing to affix disclaimers to the campaign's website and certain campaign materials. Compl. at 1-4. The Complaint states that Bottle & Cork and Jimmy's Grille, two allegedly incorporated businesses, are owned by Pires. *Id.* at 1. Pires reportedly held a "kick-off event for his campaign" on May 26, 2012, at which food and beverages, including alcoholic beverages, were provided to attendees "free of charge." *Id.* at 1-2. In addition, Bottle & Cork employees dressed in their employee t-shirts and allegedly "collected signatures" in connection with Pires's effort to appear on the general election ballot. *Id.* at 2. After reviewing the Committee's financial disclosure reports, the

1 Complaint alleges that no disbursements to Bottle & Cork were reported for food,
2 beverages, use of the company's space, or time spent by its employees for their work at the
3 event, resulting in prohibited in-kind corporate contributions. *Id.*

4 Subsequently, Pires and the Committee held a campaign event on June 11, 2012,
5 from 5:00 p.m. to 6:00 p.m. at Woodward Outdoor Equipment featuring "free chicken for
6 attendees from Jimmy's Grille." Compl. at 2; *see also* Compl. Ex. A (news release
7 announcing the event). The Complaint alleges that the Committee's financial disclosure
8 reports fail to disclose any disbursements to Jimmy's Grille for the food reportedly
9 provided at the event. Compl. at 2. Therefore, the Complaint contends that the Committee
10 funded the event with in-kind corporate contributions from Jimmy's Grille and Woodward
11 Outdoor Equipment.³ *Id.* at 3.

12 The Complaint also alleges that printed literature reportedly distributed by the
13 Complaint constituted "general public political advertising" and, as such, should have
14 included appropriate disclaimers. Compl. at 2-3; *see also* Compl. Ex. B at 1-3 (copy of
15 double-sided card with Pires's logo and language supporting him and criticizing incumbent
16 senator Tom Carper, and document entitled "Five Things I Believe" and identifying Pires
17 by name). More specifically, the disclaimers also should have complied with the
18 Commission's regulations pertaining to printed material, including the source who paid for
19 the advertisement and the requirement of being contained in a printed box set apart from the

³ The Complaint surmises that "these events may be just the tip of the iceberg, as the FEC reports indicate very few disbursements for event-related expenses . . ." Compl. at 3. Authorized candidate committees, such as the Pires Committee, must itemize disbursements to a vendor if the aggregated payments to that vendor exceed \$200 for the election cycle. 52 U.S.C. § 30104(b)(4)-(6) (formerly 2 U.S.C. § 434(b)(4)-(6)). Based on the available information, the record does not reflect that the Committee made payments to the vendors in this matter that would require itemization. Therefore, we do not address this allegation further.

1 other contents of the communication, pursuant to 52 U.S.C. § 30120(c) (formerly 2 U.S.C.
2 § 441d(c)) and 11 C.F.R. § 110.11(c). *Id.* at 3. Finally, the Complaint alleges that the
3 campaign's website, www.36YearsIsEnough.com, failed to include an appropriate
4 disclaimer. *Id.*

5 Stephen W. Spence ("Spence"), the Committee's treasurer, filed a joint response on
6 behalf of the Committee, Pires, Bottle & Cork, and Jimmy's Grille ("Joint Response"). He
7 explains that "Bottle & Cork" is a trade name for Bottle Taproom, Inc., a Delaware
8 corporation owned by Pires, and that Jimmy's Grille is "affiliated with Mr. Pires." Joint
9 Resp. at 1-2. Spence states that the May 26, 2012 "Kick Off Event" included "a cameo
10 appearance" by Pires, a first-time candidate, at Bottle & Cork's musical "Jam Session,"
11 which was one of several held "each weekend throughout the summer." *Id.* at 1-2. During
12 a break in the music, Pires reportedly announced his candidacy for the U.S. Senate. *Id.* at 2.
13 Spence asserts that the announcement, which took no more than a few minutes, did not
14 transform the "previously-scheduled and unrelated Bottle & Cork event" into a campaign
15 event, and he denies that Bottle & Cork provided free food or beverages. *Id.* at 1-2.

16 Spence states that on the same day as the Jam Session, the Pires campaign set up a
17 table outside the "Bottle & Cork premises" where paid staff and volunteers "solicited
18 signatures from Delaware registered voters to get Mr. Pires on the Delaware ballot." Joint
19 Resp. at 2. Spence asserts that he paid several individuals \$50 each in cash for their efforts.
20 *Id.* He denies that any of the individuals wore Bottle & Cork t-shirts and claims that if any
21 Bottle & Cork employees who were wearing official garb solicited signatures, they did so
22 without the campaign's knowledge or permission. *Id.*

1 According to Spence, he did not attend the June 11, 2012 event, but he believes it
2 was held on Respondent Christopher Woodward's driveway and front lawn and that fewer
3 than ten individuals attended. Joint Resp. at 2-3. Jimmy's Grille supplied food worth \$166
4 and prepared an invoice. *Id.*; see also Ex. A at 4-5 (Jimmy's Grille Invoice). Spence states
5 that, due to a billing error, he did not receive the invoice until the Complaint was filed.
6 Joint Resp. at 3. Once discovered, the Committee paid the bill on November 2, 2012. *Id.*

7 Addressing the Complaint's "disclaimer" allegations, Spence concedes that the
8 Committee's website initially included identifying information, but lacked the requisite
9 language stating that the Committee had paid for it. Joint Resp. at 3. After having been
10 made aware of the Complaint, Spence had the disclaimer "Paid for and authorized by Alex
11 Pires for U.S. Senate" added to the website. *Id.* Spence describes the two pieces of
12 campaign literature appended to the Complaint as "The 'Five Things I Believe' Handout," a
13 one-page document, which was written by Pires "in the first person," and a double-sided
14 5"x 7" campaign card. *Id.* at 3-4. Spence explains that Pires or his campaign staff delivered
15 the handouts to approximately 100 individuals at meetings early in the campaign and there
16 "could be no doubt who prepared or distributed the document." *Id.* at 3. As for the
17 campaign card, Spence acknowledges that the first order of 5,000 cards, which were printed
18 in May 2012 and distributed at several campaign stops, lacked disclaimers. *Id.* at 4. When
19 the campaign manager noticed the lack of attribution language in June 2012, the cards were
20 discarded and new cards were printed bearing the disclaimer "Paid for by Alex Pires for
21 U.S. Senate." *Id.*; see also Joint Resp. Ex. A at 2 (card including disclaimer statement).

1 In their Response, Christopher J. Woodward and Susan E. Woodward, the owners of
2 Woodward Outdoor Equipment,³ explain that they were unaware “that allowing someone to
3 use [their company’s] parking area” could result in a violation of the Act. Woodward’s
4 Resp. at 1. They observe that, in the past, they had allowed “Democratic [state] Senator
5 James Vaughn” to use their property, and that they are both members of the Democratic
6 Party. *Id.* As for the June 11, 2012 event, the Woodwards state that they simply acceded to
7 the Pires campaign’s request to hold a “Meet and Greet” on their property. *Id.*

8 **II. RELEVANT LAW**

9 **A. Contributions**

10 The Act and Commission regulations define “contribution” as any “gift,
11 subscription, loan . . . or anything of value made by any person for the purpose of
12 influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C.
13 § 431(8)(A)(i)); *see also* 11 C.F.R. § 100.52(a). “Anything of value” includes all in-kind
14 contributions, including the provision of goods or services without charge or at a charge
15 that is less than the usual and normal charge. 11 C.F.R. § 100.52(d)(1). The term
16 “contribution” does not include “the value of services provided without compensation by
17 any individual who volunteers on behalf of a candidate or political committee.” 52 U.S.C.
18 § 30101(8)(B)(i) (formerly 2 U.S.C. § 431(8)(B)(i)); *see also* 11 C.F.R. § 100.74 (the value
19 of services provided by a volunteer is not a contribution).

20 The Act and Commission regulations also prohibit corporations from making
21 contributions in connection with federal elections, and further prohibit candidates and their

³ The State of Delaware’s website lists “Woodward Enterprises, Inc.,” the business name of
“Woodward Outdoor Equipment.” *See* <https://dorweb.revenue.delaware.gov/scripts/bussrch/bussrch.dll>;
see also <https://delecorp.delaware.gov/tin/controller>.

1 campaign committees from knowingly accepting or receiving corporate contributions.
2 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); *see also* 11 C.F.R. § 114.2. This
3 prohibition extends to a campaign's unreimbursed use of a corporation's facilities, with
4 limited exceptions pertaining to volunteer activity at 11 C.F.R. § 114.9(a). Any person who
5 uses a corporation's facilities for activity in connection with a Federal election is required
6 to reimburse the corporation within a commercially reasonable time in the amount of the
7 normal and usual rental charge. 11 C.F.R. § 114.9(d); *see also* MUR 6542 (Mullin for
8 Congress) Factual and Legal Analysis at 8-10.

9 **B. Disclaimers**

10 The Act and Commission regulations require a disclaimer whenever a political
11 committee makes a disbursement for the purpose of financing any public communication
12 through any broadcast, cable, satellite communication, newspaper, magazine, outdoor
13 advertising facility, mass mailing, or any other type of general public political advertising.
14 52 U.S.C. §§ 30101(22); 30120 (formerly 2 U.S.C. §§ 431(22), 441d(a)); *see also* 11 C.F.R.
15 §§ 100.26, 110.11. A disclaimer is also required for all internet websites of political
16 committees available to the general public. 11 C.F.R. § 110.11(a)(1). If a communication
17 requiring a disclaimer is paid for by a candidate, a candidate's authorized committee, or its
18 agents, the disclaimer must clearly state that the communication was paid for by the
19 authorized committee. 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)); *see also*
20 11 C.F.R. § 110.11(b)(1).

1 **III. DISCUSSION**

2 The record is unclear as to whether the Committee may have accepted in-kind
3 corporate contributions. With respect to Bottle & Cork, the Joint Response states that two
4 events occurred on May 26, 2012, one of which was the "Jam Session," that appears to
5 have been part of Bottle & Cork's weekly summer entertainment. Joint Resp. at 1-2.
6 Although Pires admittedly announced his candidacy at the "Jam Session," the possible use
7 of any associated corporate facilities appears to have been *de minimis*.

8 As for the signature-collecting event held on the same day outside of Bottle & Cork,
9 *id.* at 2, to the extent that Bottle & Cork employees acted as volunteers to assist the
10 campaign, such activity would not constitute a contribution. 52 U.S.C. § 30101(8)(B)(i)
11 (formerly 2 U.S.C. § 431(8)(B)(i)); *see also* 11 C.F.R. § 100.74 (the value of services
12 provided by a volunteer is not a contribution). However, the Joint Response does not
13 squarely address the issue of whether Bottle & Cork's outdoor premises were used to host
14 the event, which leaves unresolved the question of whether there was an unreimbursed use
15 of corporate facilities. *See* 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and
16 11 C.F.R. § 114.2.

17 In addition, with respect to the June 11, 2012 event (*i.e.*, Woodward Outdoor
18 Equipment's driveway), the Committee and the Woodwards have indicated that Woodward
19 Outdoor Equipment was not reimbursed for the use of its facility. Therefore, the
20 Committee may have accepted an in-kind corporate contribution from Woodward Outdoor
21 Equipment for its use of the parking area. *Id.* Based on the location and number of persons

1 who purportedly attended, any potential corporate contribution resulting from the one-hour
2 event was likely *de minimis*.⁴

3 With respect to its website, the Committee acknowledges that although it included
4 information identifying it as the Pires's campaign's website, the website initially lacked a
5 disclaimer stating that the Committee had paid for it, as required by 11 C.F.R.

6 § 110.11(a)(1). Joint Resp. at 3. When it was made aware of the omission, the Committee
7 states that it added a disclaimer to its website stating "Paid for and authorized by Alex Pires
8 for U.S. Senate." *Id.*

9 The other two communications at issue were apparently distributed by hand, *see*
10 Joint Resp. at 3-4, and contained information identifying them as Pires's campaign
11 literature. The cost of the handouts, which were written by Pires and were distributed to
12 only about 100 individuals,⁵ was likely *de minimis*. The Committee concedes that
13 campaign cards lacking a disclaimer were distributed for approximately one month early in
14 the campaign. Joint Resp. at 4. When the lack of a disclaimer was noticed, the Committee
15 discarded the cards and printed new cards that included a disclaimer. *Id.*

⁴ During the June 11, 2012 event, the Pires campaign admittedly purchased \$166 worth of food from Jimmy's Grille. Joint Resp. at 2-3; *see also* Ex. A at 4-5 (Invoice from Jimmy's Grille). The Committee's failure to pay the bill until November 2, 2012, almost five months later, may have been an extension of credit outside of Jimmy's Grille's normal course of business and, thus, constituted a contribution until paid. 11 C.F.R. § 100.55; *see also* 11 C.F.R. § 116.3(a)-(c). Although the facts at hand are not clear, to the extent that Jimmy's Grille, a limited liability company, has elected treatment as a corporation for federal tax purposes, the contribution could be considered a corporate contribution. 11 C.F.R. § 110.1(g). Even assuming the contribution was prohibited, it only amounted to \$166.

⁵ *Cf.* 52 U.S.C. § 30101(23) (formerly 2 U.S.C. § 431(23)); 11 C.F.R. § 100.27 (if the handouts had been mailed, they would not have been part of a "mass mailing" (*i.e.*, greater than 500 pieces). As such, they would not have qualified as "public communications" and would not have required disclaimers. 52 U.S.C. §§ 30101(22), 30120(a) (formerly 2 U.S.C. §§ 431(22), 441d (a)); *see also* 11 C.F.R. §§ 100.26, 110.11).

1 In view of the Committee's remedial action and the *de minimis* nature of the
2 potential violations, the Office of General Counsel recommends that the Commission
3 exercise its prosecutorial discretion and dismiss the allegations that Alexander J. Pires, Jr.,
4 Alex Pires for U.S. Senate and Stephen W. Spence in his official capacity as treasurer,
5 Bottle & Cork, Jimmy's Grille & Catering, LLC, and Woodward Outdoor Equipment
6 violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2.
7 *See Heckler v. Chaney*, 470 U.S. 821 (1985). The Office of General Counsel further
8 recommends that the Commission exercise its prosecutorial discretion and dismiss the
9 allegations that Alexander J. Pires, Jr. and Alex Pires for U.S. Senate and Stephen
10 W. Spence in his official capacity as treasurer violated 52 U.S.C. § 30120(a)(1) (formerly
11 2 U.S.C. § 441d(a)(1)) and 11 C.F.R. § 110.11(a)(1) and (b)(1). *See Heckler*, 470 U.S. at
12 821. Additionally, the Office of General Counsel recommends that the Commission
13 approve the attached Factual and Legal Analyses and the appropriate letters, and close the
14 file.

15 IV. RECOMMENDATIONS

- 16 1. Dismiss the allegations that Alexander J. Pires, Jr., Alex Pires for U.S. Senate and
17 Stephen W. Spence in his official capacity as treasurer, Bottle & Cork, Jimmy's
18 Grille & Catering, LLC, and Woodward Outdoor Equipment violated 52 U.S.C.
19 § 30118(a) (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2, pursuant to the
20 Commission's prosecutorial discretion;
21
22 2. Dismiss the allegations that Alexander J. Pires, Jr. and Alex Pires for U.S. Senate
23 and Stephen W. Spence in his official capacity as treasurer violated 52 U.S.C.
24 § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)) and 11 C.F.R. § 110.11(a)(1) and
25 (b)(1), pursuant to the Commission's prosecutorial discretion;
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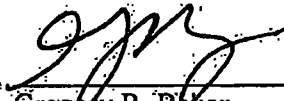
3. Approve the attached Factual and Legal Analyses and the appropriate letters; and

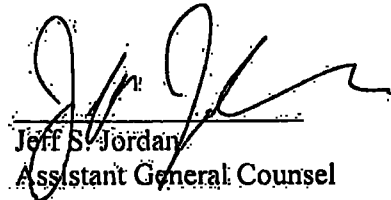
4. Close the file.


General Counsel

10/7/14
Date

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